

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

FRANCISCO ARIAS,

Defendant.

JED S. RAKOFF, U.S.D.J.

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04 CR. 911 (JSR)

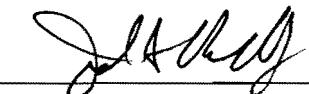
ORDER

On July 5, 2005, the Court entered a judgment of conviction in the above captioned case. Defendant Francisco Arias pled guilty to reentering the United States illegally after having been deported on aggravated felony charges without first obtaining the express permission of the United States Attorney General, and the Court sentenced Arias to 57 months' imprisonment, 27 months of which were to run concurrently with Arias's narcotics conviction in the New York State Supreme Court.

On June 11, 2009, Francisco Arias filed a "Motion for Downward Departure to Early Disposition 'Fast-Track' under USSG 5K3.1." The motion, which the Court construes as filed pursuant to either 18 U.S.C. § 3582(c)(2) or 28 U.S.C. § 2255, argues generally that district courts must compare fast-track and non-fast-track sentences to determine whether the latter are greater than necessary under 18 U.S.C. § 3553(a). The Government filed a response to the motion on August 18, 2009, and Arias filed a reply on September 3, 2009.

The motion is without merit. In United States v. Hendry, 522 F.3d 239 (2d Cir. 2008), the Second Circuit held that "defendants in fast-track districts [are] not similarly situated to those in non-fast-track districts," and, therefore, that "sentences in fast-track districts cannot be compared with sentences in non-fast-track districts in order to demonstrate that the latter are longer than necessary." 522 F.2d at 242. Accordingly, petitioner's motion is denied. The Clerk of the Court is directed to close docket number 14 on 04 Cr. 911.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
October 29, 2010